

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL SCHNEIDER,

No. C 10-5753 WHA

Petitioner,

vs.

JIM MACDONALD, Warden at La  
Palma Correctional Center (Eloy, AZ),  
and MATTHEW CATE, Secretary of  
California Department of Corrections  
and Rehabilitation,

**ORDER GRANTING LEAVE TO  
FILE AMENDED PETITION AND  
ORDER TO SHOW CAUSE**

Respondents.

Petitioner's motion for leave to file an amended petition is **GRANTED**, and petitioner's counsel shall file the proposed amended petition on the docket as the first amended petition by **JULY 18, 2011**.

\* \* \*

Petitioner, a prisoner currently incarcerated in Arizona, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254 challenging a conviction in California state court.

According to the petition, in 2007 petitioner entered pleas of no contest to 173 counts, including first degree burglary, grand theft, theft from an elder, obtaining money by false pretenses, forging the seal or handwriting of another, forging an instrument other than a check, and embezzlement by a fiduciary, in Santa Clara County Superior Court. The trial court sentenced him to a term of twenty-eight years and four months in state prison. The California Court of Appeal affirmed the conviction, and the California Supreme Court denied review.

1 A district court may entertain a petition for writ of habeas corpus “in behalf of a person  
2 in custody pursuant to the judgment of a State court only on the ground that he is in custody in  
3 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. 2254(a).  
4 Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512  
5 U.S. 849, 856 (1994).

6 As a basis for federal habeas relief, petitioner claims that he was denied effective  
7 assistance of counsel in state court. Liberally construed, the issues in the petition are sufficient  
8 to require a response.

9 1. Respondents shall file with the Court and serve on petitioner, within **NINETY DAYS** of  
10 the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules  
11 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be  
12 granted based on the cognizable claim in the petition, as identified above. Respondents shall  
13 file with the answer and serve on petitioner a copy of all portions of the state trial record that  
14 have been transcribed previously and that are relevant to a determination of the issues presented  
15 by the petition.

16 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the  
17 Court and serving it on respondents within **THIRTY DAYS** of the date the answer is filed.

18 2. Respondents may file, within **NINETY DAYS**, a motion to dismiss on procedural  
19 grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the  
20 Rules Governing Section 2254 Cases. If respondents file such a motion, petitioner shall file  
21 with the Court and serve on respondents an opposition or statement of non-opposition within  
22 **THIRTY DAYS** of the date the motion is filed, and respondents shall file with the Court and serve  
23 on petitioner a reply within **FIFTEEN DAYS** of the date any opposition is filed.

24 3. Petitioner is reminded that all communications with the Court must be served on  
25 respondents by mailing a true copy of the document to respondents’ counsel. Petitioner must  
26 comply with court orders in a timely fashion. Failure to do so may result in the dismissal of this  
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1 action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez*  
2 *v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

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4 **IT IS SO ORDERED.**

5 Dated: July 13, 2011.



6 WILLIAM ALSUP  
7 UNITED STATES DISTRICT JUDGE  
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